IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2280 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
RAMA JETHA ODEDARA - Respondent(s)

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Appearance :
MR AY KOGJE APP for Applicant,
MR YOGESH S LAKHANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/05/2007

ORAL JUDGMENT

This application has been filed by the State seeking cancellation of bail granted to the respondent herein.

2. On 10th June, 2006, criminal complaint came to be lodged by one Dhaniben before the Kamlabaug Police Station alleging offences punishable under Sections 302, 506 (2), 34 of Indian Penal Code and Section 135 of Bombay Police Act against four accused persons including the respondent herein.

2.1. In the said complaint, the complainants stated that at about 5:30 p.m. on 10th June, 2006 when she along with her husband Rana Bhika and his wife Rupiben were returning towards Oddar village, Rana Bhika was attacked by the respondent and his three brothers. Respondent was carrying a sword, others were also carrying weapons like axe, sticks etc. They started giving blows indiscriminately to Rana Bhika. Complainant and Rupiben were warned if they did not leave the place they will also be harmed. Ultimately, Rana Bhika died due to the injuries received by him in the said attack.

3. Respondent and his brother Arjan Jetha moved a bail application before the Additional Sessions Judge being Criminal Misc. Application No.167/2006. So far as the present respondent is concerned the learned

Judge granted the bail while rejecting the prayer for bail of his brother Arjan Jetha.

3.1. In order to grant bail to respondent herein, the learned Judge relied on certain factors which according to him would make the presence of respondent no.1 at the scene of incident doubtful. The factors were that, though as per the complainant, respondent no.1 was carrying a sword and had given sword blows to the deceased, there were no incise wounds found on the body of the deceased as per the postmortem report. Another factor which the learned Judge relied upon was that on the sword discovered at the instance of the respondent herein, no blood stains were found. Third factor which weighed the learned Judge was that the respondent himself had lodged the complaint before the same police station about misbehaviour of the deceased. To inquire into the complaint, the police officer had set out from the police station. Their statements recorded that they left the police station at 18:40 hrs. Learned Judge found that there were overwriting of time in these statements of all the police officers raising suspicion about the time when respondent was present before the police station giving his complaint.

4. On the above grounds, learned Judge was of the opinion that presence of respondent no.1 at the scene of incident being doubtful, he should be released on bail.

5. Appearing for the State, learned APP Shri Kogje submitted that the learned Judge has granted bail, in totally irrelevant consideration. He submitted that the postmortem report clearly reveals that there were injuries on all parts of the body particularly, there were incise wounds on the head and forehead of the deceased. He pointed out that one of the causes of death was injury to the vital part of the body i.e. brain.

5.1. It was submitted that FSL report which was though not available when the learned Judge passed the order has since been obtained by the prosecution which reveals the presence of blood on the sword.

5.2. It was further submitted that the alleged overwriting in the statements of the police officers would not further be the case of the accused.

6. On the other hand learned advocate Shri Lakhani appearing for the respondent opposed the application and submitted that the learned Judge has exercised discretionary powers and there is no reason to interfere with such discretion.

6.1. It was submitted that the respondent has been released on bail since five months and there are no complaints about his having misused the liberty.

6.2. It was further submitted that the order

passed by the learned Judge cannot be categorized as perverse so far as to call for interference by this Court.

7. Having heard learned advocates appearing for the parties, it would appear that the postmortem report does reveal presence of incise wounds. In this respect, therefore, the observation of learned Judge does not seem to be accurate.

8. With respect to presence of blood on the sword discovered, the panchnama records that upon careful examination of the sword, no blood is found. FSL report however, subsequently, notices some blood spots. The group of the blood so found could not be ascertained. The same therefore, could not be matched with the blood group of the deceased.

9. With respect to overwriting, it would appear that learned Judge perused the statements and found that in all statements there were some corrections/overwriting about the time when the police party left the police station to inquire into the complaint of the respondent regarding unlawful behaviour of the deceased.

10. It may be that there are certain circumstances which weighed that the learned Judge in granting bail, which are not entirely borne out from record, nevertheless, when this court is considering the cancellation of bail issue to be addressed is whether

the order was perverse and the bail granted by the learned Judge was on the basis of entirely irrelevant and extraneous consideration or without taking into account relevant aspects. Another ground on which this Court would be justified in cancellation of bail granted by the Sessions court would be of misuse of liberty by the accused or some supervening circumstances justifying cancellation of bail.

11. Admittedly, there are no allegations of the accused having misused his liberty. There are no supervening circumstances which would materially alter the situation. Despite the fact that, I find that the learned Judge was not justified in observing that there are no incise wound found on the body of the deceased, I find that the order passed by the learned Judge does not call for interference in exercise of powers of cancellation of bail. The learned Judge was influenced by some overwriting in the statements of the police officers. Full effect of this overwriting can be decided only at the time of trial. At this stage, I do not find that the bail already granted needs to be cancelled, especially so when the respondent has not misused the liberty after being released on bail.

12. However, one may not loose site of the fact that the complainant is a lady and the other eye witness also is wife of the deceased. To avoid any possibility of pressurizing the witness, the bail granted to respondent shall continue on the

additional condition that he shall not enter Porbandar Taluka till the trial is over except for the purpose of attending the trial and for marking his presence before the police station.

13. With this additional condition, bail granted to respondent is not disturbed. Application is disposed of accordingly.

[AKIL KURESHI, J.]

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